

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification)	
And Compensation Provisions of the)	CC Docket No. 96-128
Telecommunications Act of 1996)	DA 01-1967
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Clarification)	

**Reply Comments of CommuniGroup of K.C., Inc., CommuniGroup of Jackson,
Inc., Inc., NTS Communications, Inc., Transtel Communications, Inc.,
Tel America of Salt Lake City, Inc., National Network Corporation, and
Extelcom, Inc., d/b/a Express Tel**

The undersigned switch-based resellers (“Switch-Based Resellers”) briefly respond as follows to the comments filed by various parties on the WorldCom, AT&T and Global Crossings Petitions for Reconsideration, Clarification, and Declaratory Ruling.

1. Compensation for Uncompleted Calls.

First, little more needs to be said on the issue of whether WorldCom and AT&T should succeed in making switch-based resellers pay for uncompleted as well as completed payphone calls, while facilities-based long distance carriers (“IXCs”) and switchless resellers pay only for completed calls. The commenting parties have refuted, by overwhelming weight of legal authority, WorldCom’s and AT&T’s proposition that would unlawfully redefine a “completed call.” It should be noted that neither WorldCom nor AT&T presented, or even discussed, any legal authority for the action which they propose that this Commission should undertake. Even major payphone providers including the RBOC Coalition and Qwest joined the switch-based reseller community on

this point.¹ The proposal if implemented would violate not only the “completed call” language of the payphone compensation statute (47 U.S.C. Sec. 276) but also the basic common carrier obligations of AT&T and WorldCom to refrain from unreasonable discrimination² and provide service upon reasonable request.³

2. The Scope of this Proceeding Should be Narrowed to Address Only Those Calls Which the Facilities-Based IXC Cannot Track to Completion Using Its Own Facilities.

Second, the issues raised by WorldCom and AT&T should be narrowed only to those specific instances in which the facilities-based IXCs cannot determine call completion on their own. The facilities-based IXCs in their comments never defined the parameters of those technical situations. Reading their comments, one might think that the facilities-based IXCs can never tell if a call completes once it is handed off to a switch-based reseller. (See, for example, WorldCom Comments at ii). This reluctance to discuss specifics is understandable given the major categories of payphone calls,

¹ Qwest Communications International Comments at 2; RBOC Payphone Coalition Comments at 2 (facilities-based IXCs may pay for uncompleted calls only if they do not seek reimbursement for such calls from the switch-based reseller).

² 47 U.S.C. Sec. 202

³ In the recent CLEC access charges order, the Commission reaffirmed the duty of long distance carriers under 47 U.S.C. Sec. 201(a) to provide service to customers “upon reasonable request,” explaining that if a request for service met lawful requirements it must be honored. Specifically, the Commission held that if a facilities-based IXC in carrying a call would not incur CLEC access charges in excess of the Commission’s guidelines, then the request by a customer for service was reasonable and cannot be refused by the facilities-based IXC on the grounds that the CLEC access charges were higher than what the facilities-based IXC would like to pay. *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, FCC 01-146, para. 94 (rel. April 27, 2001). Similarly, a facilities-based IXC cannot refuse service if the switch-based reseller is willing to reimburse it for completed payphone calls plus the reasonable administrative fee allowed by the Commission. A request for service meeting these standards complies with the *Second Order on Reconsideration*, 16 FCC Rcd. 8098 (March 28, 2001), and cannot be rejected on the grounds the facilities-based IXC would also like reimbursement for uncompleted payphone calls.

notably Subscriber 1-8XX calls, for which facilities-based IXC's can detect call completion.

As demonstrated in detail by the Switch-Based Resellers in their Opposition, which is verified by sworn statements attached as Exhibit 1 to these Reply Comments, answer supervision for subscriber 1-8XX calls flows through the calling path to the facilities-based IXC when and only when the called party answers the phone. Thus facilities-based IXC's need no assistance from the switch-based reseller to determine call completion. Subscriber 1-8XX calls are direct dialed by the consumer to the called party (such as a catalog merchant that advertises a toll-free number) without the need to first enter an access number and PIN. As there is only one leg to the call, the pause for entry of a PIN and dialed number is not present and (even without SS7) the answer supervision will only be returned to the facilities-based IXC when the call reaches the called party.

In overseeing the industry as it implements the reporting and tracking requirements of the *Second Order on Reconsideration*, the Commission should at the outset eliminate unnecessary uncertainty in the marketplace by addressing further only those situations in which the facilities-based carrier cannot determine call completion on its own. Where the facilities-based carrier can track calls to completion, there is no need for any reporting from the switch-based reseller. In addition to excluding Subscriber 1-8XX calling, such narrowing of the proceeding will also exclude prepaid calling card calls when SS7 is available (so that answer supervision is returned to the facilities-based IXC when the call reaches the called party rather than when it reaches the card platform.)

3. Compliance with the Second Order on Reconsideration.

Third, once the Commission has so narrowed the scope of this proceeding, it should instruct WorldCom, AT&T, and the other facilities-based carriers to comply with their duty under paragraphs 16 and 20 of the *Second Order on Reconsideration* to enter into arrangements with switch-based resellers to track calls to completion. Commenting parties noted the discrepancy between the duty imposed by these paragraphs and the decision of the major facilities-based carriers to automatically treat calls delivered to switch-based resellers as complete. For instance, the Switch-Based Resellers noted that by writing to switch-based resellers to say that “[a]ll calls that originate from a payphone that are delivered for completion to a facilities based reseller (FBR) (i.e., an entity that has its own switch/platform) will be deemed completed and will be assessed the payphone surcharge,” WorldCom has refused to make arrangements with switch-based resellers to track calls to completion.⁴ Others noted the outright admission by AT&T that it was continuing a policy of deeming calls delivered to resellers as complete, and presumably passing on the charges for uncompleted calls to resellers.⁵

4. Preservation of the Right of PSPs and Switch-Based Resellers to Contract for Direct Payment of Payphone Compensation.

Finally, in response to WorldCom’s comments, the Commission should clarify that switch-based resellers and PSPs may enter into a mutually agreeable contract with or

⁴ Letter of July 31 2001 from Dennis Kolb, Vice President, MCI WorldCom Wholesale Marketing, to Telephone Electronics Corporation (“TEC”). TEC has direct or indirect investment interests in each of the undersigned Switch-Based Resellers. Judging by the comments of other switch-based resellers, this letter was a form letter sent to many carriers. *See, e.g.,* Comments of the International Prepaid Communications Association at 2.

⁵ IDT Initial Comments at 32-33; CenturyTel Long Distance Comments at 4.

without the consent of the facilities-based IXC. This point should be clear from the Commission's discussion of PSP/reseller contracts in the *Second Order on Reconsideration*:

[W]e also include in the revised rules a proviso that PSPs may continue to rely upon any current or future contractual arrangements they may have with the underlying facilities-based carrier or resellers.⁶

By explaining that a PSP could enter into a contract with a facilities-based carrier "or" could enter into a contract with a reseller, the Commission clearly gave the PSP a choice of contracting with a reseller without the involvement of the facilities-based IXC. The choice explicitly provided by the Commission promotes market-based solutions to payphone compensation problems by giving the switch-based reseller at least a chance (if the PSP is willing) to bypass an uncooperative facilities-based IXC.

In pursuit of a veto right over PSP/switch-based reseller contracts, WorldCom attached to its comments and asked the Commission to bless a "Payphone Indemnification Form." If approved for use by facilities-based IXCs, this form would effectively overturn the *Second Order on Reconsideration* and eliminate the right of PSPs and switch-based resellers to directly contract with each other.⁷

This form requires the switch-based reseller to represent to WorldCom that it will make direct payments to each and every one of the eleven (11) largest PSPs (or PSP aggregators) before WorldCom would permit the switch-based reseller to make direct

⁶ *Second Order on Reconsideration*, para. 19 (emphasis added).

⁷ WorldCom also attached a PSP Release Form which contains a broad and open-ended release with no explicit mechanism under which the PSP could reestablish WorldCom's liability in the event the PSP later chose to cancel arrangements with a switch-based reseller. While the form is overbroad and unnecessary, the Switch-Based Resellers would not object to the Commission clarifying what should be obvious – that payment by a switch-based reseller to the PSP excuses the facilities-based IXC from liability.

payments to any PSPs.⁸ Under this WorldCom-proposed rule, the largest PSPs would have the right to veto deals between switch-based resellers and any other PSP – and two of those large PSPs have already announced policies of declining to deal directly with switch-based resellers.⁹ If the Commission gives any credence to WorldCom’s professed inability to track whether particular switch-based resellers have reached agreement with particular PSPs, far more reasonable remedies are available.¹⁰

Rather than effectively revising its regulations by blessing take-it-or-leave-it adhesion contracts, the Commission should remind parties of the duty to comply with the *Second Order on Reconsideration*, which permits direct arrangements between switch-based resellers and PSPs, and allow market forces to operate within that regulatory framework.

⁸ Absent signature of this form, WorldCom would apparently proceed to double pay the PSP and bill the switch-based reseller, who has already paid the PSP.

⁹ Attached as Exhibit 2 is a September 17, 2001 letter from Qwest Public Access Solutions to one of the Switch-Based Resellers (NTS Communications, Inc.) announcing that Qwest is not interested in direct payment agreements with switch-based resellers. Similar information was provided orally to NTS Communications, Inc. by BellSouth Public Communications.

¹⁰ For example, the Commission could require that if a switch-based reseller desired to pay any major PSP, then the switch-based reseller must also agree to pay all other major PSPs that have notified the Commission of their willingness to accept direct payments from switch-based resellers on reasonable and standardized terms. Facilities-based IXC’s would monitor the list of PSPs filing that notification. Certainly, switch-based resellers should notify facilities-based IXC’s that they have made the choice to deal directly with PSPs.

Conclusion

The undersigned Switch-Based Resellers ask the Commission to rule in this matter in a manner consistent with their Opposition filed October 9, 2001 and these Reply Comments.

Respectfully submitted

Communigroup of K.C., Inc., d/b/a CGI
CommuniGroup of Jackson, Inc.
NTS Communications, Inc.
Transtel Communications, Inc.
Tel-America of Salt Lake City, Inc.
National Network Corporation
Extelcom, Inc. dba Express Tel

By their counsel

/s/ James U. Troup
James U. Troup
James H. Lister
McGuireWoods, LLP
Suite 1200, 1050 Connecticut Ave., NW
Washington, DC 20036
(202) 857-1700
(202) 857-1737 (fax)

Stan Stoll
Blackburn & Stoll, LC
77th West 200 South, Suite 400
Salt Lake City, UT 84101
801-521-7900
801-521-7965 (fax)

Counsel for Transtel, Tel America, National Network and Express Tel

Dated October 22, 2001

Certificate of Service

The undersigned hereby certifies that on this 22nd day of October, 2001, he sent the forgoing by first-class U.S. mail, postage-prepaid to the following:

Larry Fenster
WorldCom, Inc.
1133 19th St., NW
Washington, D.C. 20036

Mark C. Rosenblum
Richard H. Rubin
AT&T Corporation
Room 1127M1
295 N. Maple Avenue
Basking Ridge, NJ 07920

Michael J. Shortley, III
Global Crossings Telecommunications, Inc.
180 South Clinton Avenue
Rochester, NY 14646

/s/ James H. Lister
James H. Lister

83507

Exhibit 1

Verifications to Initial Comments¹ (Submitted on October 9, 2001) and Reply Comments

¹ The Initial Comments were filed as an Opposition.

FROM :

FAX NO. :


Oct. 22 2001 01:31PM P1

Verification
CC Docket No. 96-128
Payphone Compensation

The undersigned has read carefully the attached Reply Comments and the Initial Comments (submitted on October 9, 2001) of:

CommuniGroup of K.C., Inc., d/b/a CGI
CommuniGroup of Jackson, Inc.
NTS Communications, Inc.
Transtel Communications, Inc.
Tel America of Salt Lake City, Inc.
National Network Corporation
Extelcom d/b/a Express Tel

The information presented in the Initial Comments and Reply Comments to the Commission is true and correct. Executed under penalty of perjury


Print Name: David L. Jones
Print Title: President
Company: CommuniGroup of K.C. Inc, d/b/a CGI
Date: 10/22/2001

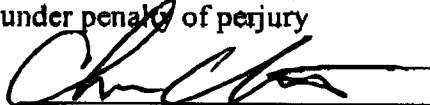
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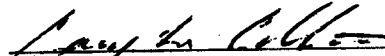

Print Name: Chess Chelette
Print Title: PRESIDENT
Company: CommuniGroup of Jackson, Inc.
Date: 10-22-01

Verification
CC Docket No. 96-128
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The information presented in the Initial Comments and Reply Comments to the Commission is true and correct. Executed under penalty of perjury


Print Name: CARY L. COLLINS
Print Title: V.P. OPERATIONS
Company: NTS COMMUNICATIONS
Date: OCT. 22, 2001

Verification
CC Docket No. 96-128
Payphone Compensation

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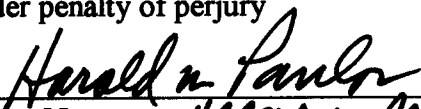

Print Name: HAROLD M. PAULOS
Print Title: DIRECTOR, CORP. OPS.
Company: TRANSTEL COM. INC., TEL AMERICA,
Date: 10/19/01 NAT. NETWORK CORP.,
EXPRESS TEL

Exhibit 2

Letter From Qwest Public Access Solutions



September 17, 2001

Qwest Public Access Solutions
1600 7th Avenue
Room 2603
Seattle, WA 98177

RE: Direct Payment of Payphone Compensation By Resellers

Dear NTS Communications:

I am responding to NTS Communications' request that Qwest Public Access Solutions ("Qwest") enter into an agreement for the direct payment of per call compensation. Under the proposed agreement, NTS Communications would agree to pay per call compensation directly to Qwest for calls originating at Qwest payphones that are delivered to NTS Communications' platform or switch. Qwest declines to accept NTS Communications' offer. For numerous reasons, Qwest plans to look to the "first facilities-based" IXC for the payment of payphone compensation after the FCC's recent rule change takes effect in late October 2001.¹

As you know, prior to the adoption of the Commission's new rules, resellers were allowed to assume responsibility for paying payphone compensation directly to payphone service providers ("PSP") by identifying themselves to the first facilities-based carrier (normally an IXC).² The FCC's rule modifications were a direct result of the fact that PSPs experienced great difficulty in collecting per call compensation from either IXCs or resellers for calls involving resellers. While the FCC's rule changes should resolve this problem on a going forward basis, the FCC did not relieve resellers of past per call compensation obligations. Thus, if your firm has previously identified itself to an IXC and assumed the burden of paying per call compensation (i.e., a self-designating reseller), your firm is still responsible for all past and current payphone compensation due Qwest until the new rules take effect.³

Respectfully,

Larri M Menear
Senior Product Manager
Qwest Public Access Solutions

¹ *In the Matter of The Payphone Telephone Reclassification and Compensation Provisions of The Telecommunications Act of 1996, RBOC/GTE/SNET Payphone Coalition Petition for Clarification, Second Order on Reconsideration ("Order")*, CC Docket No. 96-128, NSD File No. L-99-34, released April 5, 2001 at ¶ 2.

² See *Order* at ¶ 20.

³ See *Order* at ¶ 20.